IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 192 of 2007
In
SPECIAL CIVIL APPLICATION No. 8637 of 1999
With
CIVIL APPLICATION No. 3025 of 2007
In LETTERS PATENT APPEAL No. 192 of 2007

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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E P ARUN - Appellant(s)
Versus
JOSPHINABEN ANILBHAI CHRISTIAN & 1 - Respondent(s)

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Appearance :
MR AA QURESHI for MR SHAKEEL A QURESHI for Appellant(s) : 1,
MR RAJESH P MANKAD for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE K.M.THAKER

Date : 17/01/2008

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

Heard the learned advocates.

With the consent of the learned advocates, this Appeal is heard and disposed of today.

This Appeal preferred under clause 15 of the Letters Patent arises from the judgment and order dated 22nd July, 2005 passed by the learned Single Judge in Special Civil Application No.8637/1999.

The appellant before this Court is one Smt.E.P.Arun, Principal, Webb Memorial Girls' High School, Vadodara, a non-government, grant-in-aid, higher secondary school (hereinafter referred to as **"the Management"**). The respondent no.1 is the concerned workman (hereinafter referred to as, **"the workman"**).

It appears that in the month of June, 1992 the workman was appointed as a casual worker on daily wages for cleaning the school premises and for

serving water. Her service was discontinued in the month of January, 1994. Once again she was appointed in the month of March, 1994 for a period of one month during the S.S.C. Examination for cleaning the school premises and for serving water. Since then, her service was discontinued. Feeling aggrieved, the workman raised industrial dispute, which came to be referred to the Labour Court, Vadodara. The Labour Court, Vadodara, by its judgment and award dated 13th January, 1999, allowed the reference, directed the Management to reinstate the workman in service and to pay 70% of the backwages.

Feeling aggrieved, the Management preferred Special Civil Application No.8637/1999 before this Court. One of the contentions that the Management raised was the jurisdiction of the Labour Court to entertain the dispute raised by the workman. According to the Management, a special forum i.e. the Higher Secondary Schools Services Tribunal has been constituted under the Gujarat Higher Secondary Schools Services Tribunal Act, 1983 (hereinafter referred to as, **“the Act of 1983”**). In view of the

said Act, the Labour Court had no jurisdiction to entertain and decide the dispute in question. The learned Single Judge did not allow the Management to press that contention on the ground that the said contention was not raised before the Labour Court. After considering the facts on record, the learned Single Judge has allowed the petition partially. The award for backwages has been set-aside. It has been clarified that "**the petitioner shall be entitled to be reinstated with continuity of service.**" Feeling aggrieved, the Management has preferred the present Appeal.

We are informed at the Bar that since the order of the learned Single Judge the workman has been reinstated in service as a casual labourer. She is being paid the last drawn wages of Rs.15=00 per day. We are also informed that the workman has taken out recovery proceeding. She has claimed reinstatement in service as a Peon; the salary as that of a Peon and the arrears of salary.

Mr.Qureshi has assailed the judgment of the

learned Single Judge. He has submitted that the learned Single Judge has erred in not allowing the Management to raise the issue of jurisdiction. He has produced the written statement filed before the Labour Court for our perusal. He has submitted that the question of jurisdiction was specifically raised before the Labour Court. Although, the Labour Court did not frame proper issue nor did it deal with the said contention.

We do find that in the written statement filed before the Labour Court the Management did raise issue as to the jurisdiction of that Court to entertain the matter at dispute. But, the said contention was a general challenge to the jurisdiction of the Labour Court. Specific reference to the Tribunal especially constituted in the subject matter was not raised. Section 8 of the Act of 1983 provides for the disputes to be decided by the Tribunal constituted under the said Act. It reads as under :

“Where there is any dispute between the manager

of a higher secondary school and an employee of such school, which is connected with the conditions of service of such employee, the manager or, as the case may be, such employee may make an application to the Tribunal for the decision of the dispute."

Section 13 of the said Act expressly bars the jurisdiction of the Civil Court to settle, decide or deal with any question which, by or under the said Act, requires to be settled, decided or dealt with by the Tribunal.

Be that as it may, both the learned advocates, upon instructions received from the concerned party, agree that the workman be reinstated in service as a daily wage casual labourer and that she is not entitled to be appointed as a Peon on regular basis. It is also agreed that the workman be paid the minimum wages from the date she has been reinstated in service and that she shall withdraw the recovery proceedings instituted by her. The sum of Rs.25,000=00 paid to her be adjusted against the arrears of wages to be paid hereafter.

In view of the aforesaid consensus, we allow the Appeal partially as under :-

(1)The respondent no.1 workman is entitled to be reinstated in service with continuity as casual labourer on daily wages;

(2)The respondent workman will be paid wages in accordance with the minimum wages declared by the State Government from time to time. She will be paid such wages from the date she has been reinstated in service in the year 2005;

(3)The arrears of wages computed as above shall be paid by the Management to the workman within six weeks from today. The sum of Rs.25,000=00 paid to the workman will be adjusted against the arrears of wages payable under this order;

(4)The workman will withdraw the recovery proceedings and any other proceeding instituted by her in the subject matter.

It is understood that the workman will discharge her duties regularly and diligently. She will not cause nuisance to the Management or the students.

The impugned award dated 26th February, 1999 made by the Labour Court, Vadodara in Reference No.LCV/711/94 be modified in the above terms.

Subject to the above directions, the Appeal and the Civil Application stand disposed of.

(K.M.Thaker, J.) **(Ms. R.M.Doshit, J.)**

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